

HIPAA PRIVACY AND NOVEL CORONAVIRUS

WHAT PATIENT INFORMATION MAY BE SHARED UNDER THE HIPAA PRIVACY RULE IN AN OUTBREAK OF INFECTIOUS DISEASE?

Treatment: Under the Privacy Rule, Covered Entities may disclose, without a patient's authorization, protected health information ("PHI") about the patient as necessary to treat the patient or to treat a different patient. See 45 CFR 164.502(a)(1)(ii) and 164.506(c).

Public Health Activities: The HIPAA Privacy Rule recognizes the legitimate need for public health authorities and others responsible for ensuring public health and safety to have access to PHI that is necessary to carry out their public health mission. Therefore, the Privacy Rule permits Covered Entities to disclose needed PHI without individual authorization:

- To public health authority - PHI may be disclosed to public health authorities such as the CDC or a state or local health department that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury or disability. (A "public health authority" is an agency or authority of the United States government, a state, a territory, a political subdivision of a state or territory or Indian Tribe that is responsible for public health matters as part of its official mandate, as well as a person or entity acting under a grant of authority from, or under a contract with, a public health agency). See 45 CFR 164.501 and 164.512(b)(1)(i).
- At the direction of a public health authority, to a foreign government agency - PHI may be disclosed to a foreign government agency that is acting in collaboration with the public health authority. See 45 CFR 164.512(b)(1)(i).
- To persons at risk - PHI may be disclosed to persons at risk of contracting or spreading a disease or condition if other law, such as state law, authorizes the Covered Entity to notify such persons as necessary to prevent or control the spread of the disease or otherwise to carry out public health interventions or investigations. See 45 CFR 164.512(b)(1)(iv).

Disclosures to Family, Friends and Others Involved in an Individual's Care and for Notification: A Covered Entity may share PHI with a patient's family members, relatives, friends or other persons identified by the patient as being involved in the patient's care. A Covered Entity also may share information about a patient as necessary to identify, locate and notify family members, guardians or anyone else responsible for the patient's care, of the patient's location, general condition or death. See 45 CFR 164.510(b).

- The Covered Entity should get verbal permission from individuals or otherwise be able to reasonably infer that the patient does not object, when possible; if the individual is incapacitated or not available, Covered Entities may share information for these purposes if, in their professional judgment, doing so is in the patient's best interest.
- A Covered Entity may share PHI with disaster relief organizations, like the American Red Cross, that are authorized by law or by their charters to assist in disaster relief efforts, for the purposes of coordinating the notification of family members, or other persons involved in the patient's care, of the patient's location, general condition or death.

Disclosures to Prevent a Serious and Imminent Threat: Covered Entities may share PHI with anyone as necessary to prevent or lessen a serious and imminent threat to the health and safety of a person or the public, consistent with applicable law (such as state statutes, regulations or case law) and the provider's standards of ethical conduct. See 45 CFR 164.512(j). Covered Entities may disclose a patient's PHI to anyone who is in a position to prevent or lessen the serious and imminent threat, including family, friends, caregivers and law enforcement without a patient's permission. HIPAA expressly defers to the professional judgment of health professionals in making determinations about the nature and severity of the threat to health and safety. 45 CFR 164.512(j).

Disclosures to the Media or Others Not Involved in the Care of the Patient: In general, affirmative reporting to the media or the public at large about an identifiable patient, or the disclosure to the public or media of specific information about treatment of an identifiable patient, such as specific tests, test results or details of a patient's illness, may not be done without the patient's written authorization (or the written authorization of a personal representative who is a person legally authorized to make health care decisions for the patient). See 45 CFR 164.508.

Minimum Necessary: For most disclosures, a Covered Entity must make reasonable efforts to limit the information disclosed to that which is the "minimum necessary" to accomplish the purpose. Covered Entities may rely on representations from a public health authority or other public official that the requested information is the minimum necessary for the purpose, when that reliance is reasonable under the circumstances. See 45 CFR 164.502(b), 164.514(d).

Click [here](#) for more detailed information.

The above information is intended to highlight some aspects of the HIPAA Privacy Rule. It is intended for informational and educational purposes only and is not to be construed as legal advice as the specific facts of any given matter will greatly affect the legal advice given. You should consult your own attorneys for specific legal advice.

If you have any questions or would like additional information about this topic, please contact:

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